

PRISONER'S CIVIL RIGHTS COMPLAINT (Rev. 05/2015)

United States Courts  
Southern District of Texas  
FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE Southern DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MAR 11 2019

David J. Bradley, Clerk of Court

Benjamin Franklin, 1561085

Plaintiff's Name and ID Number

McConnell unit

Place of Confinement

CASE NO. \_\_\_\_\_  
(Clerk will assign the number)

v.

Christopher D. Sweet, McConnell unit

Defendant's Name and Address

John Doe, McConnell unit

Defendant's Name and Address

John Doe, McConnell unit

Defendant's Name and Address

(DO NOT USE "ET AL.")

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INSTRUCTIONS - READ CAREFULLY

NOTICE:

**Your complaint is subject to dismissal unless it conforms to these instructions and this form.**

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten, in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACKSIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the clerk of the United States district court for the appropriate district of Texas in the division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. If you are confined in the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID), the list labeled as "VENUE LIST" is posted in your unit law library. It is a list of the Texas prison units indicating the appropriate district court, the division and an address list of the divisional clerks.

**FILING FEE AND IN FORMA PAUPERIS (IFP)**

1. In order for your complaint to be filed, it must be accompanied by the statutory filing fee of \$350.00 plus an administrative fee of \$50.00 for a total fee of **\$400.00**.
2. If you do not have the necessary funds to pay the fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis*, setting forth information to establish your inability to prepay the fees and costs or give security therefor. You must also include a current six-month history of your inmate trust account. If you are an inmate in TDCJ-CID, you can acquire the application to proceed *in forma pauperis* and the certificate of inmate trust account, also known as *in forma pauperis* data sheet, from the law library at your prison unit.
3. The Prison Litigation Reform Act of 1995 (PLRA) provides "... if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." See 28 U.S.C. § 1915. Thus, the court is required to assess and, when funds exist, collect, the entire filing fee or a initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the court will apply 28 U.S.C. § 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your inmate trust account, until the entire \$350.00 statutory filing fee has been paid. (The \$50.00 administrative fee does not apply to cases proceeding *in forma pauperis*.)
4. If you intend to seek *in forma pauperis* status, do not send your complaint without an application to proceed *in forma pauperis* and the certificate of inmate trust account. Complete all essential paperwork before submitting it to the court.

**CHANGE OF ADDRESS**

It is your responsibility to inform the court of any change of address and its effective date. Such notice should be marked "**NOTICE TO THE COURT OF CHANGE OF ADDRESS**" and shall not include any motion for any other relief. Failure to file a NOTICE OF THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedure.

**I. PREVIOUS LAWSUITS:**

- A. Have you filed *any* other lawsuit in state or federal court relating to your imprisonment? ☒ YES ☐ NO
- B. If your answer to "A" is "yes", describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)
  1. Approximate date of filing lawsuit: NOV 30 2017
  2. Parties to previous lawsuit:
 

Plaintiff(s) BENJAMIN FRANKLIN

Defendant(s) Beeville CITY OF TEXAS, et Al,
  3. Court: (If federal, name the district; if state, name the county.) Southern
  4. Cause number: 2:17-CV-370
  5. Name of judge to whom case was assigned: Hilda Tagle
  6. Disposition: (Was the case dismissed, appealed, still pending?) Still pending
  7. Approximate date of disposition: \_\_\_\_\_

II. PLACE OF PRESENT CONFINEMENT: McConnell

III. EXHAUSTION OF GRIEVANCE PROCEDURES: 2019026178

Have you exhausted all steps of the institutional grievance procedure? ☒ YES ☐ NO

Attach a copy of your final step of the grievance procedure with the response supplied by the institution.

IV. PARTIES TO THIS SUIT:

A. Name and address of plaintiff: Benjamin Franklin, McConnell unit, 3001 S. Emily drive  
Beeville, TEXAS 78102

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: Christopher D. Sweet, Sergeant of Correctional Officers,  
McConnell unit

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

deliberate indifference to plaintiff's property rights AND <sup>willful</sup> omission to correct subordinate

Defendant #2: John Doe, Correctional Officer, McConnell unit

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

CONFISCATION of Property without due Process of LAW - Violated Procedural due Process rules

Defendant #3: John Doe, Investigator of Grievance, McConnell unit

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Civil conspiracy <sup>with</sup> Actual malice in depriving plaintiff of property, Aided other defendants to evade responsibility for my property, omission of responsive action in grievance system.

Defendant #4: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #5: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

## V. STATEMENT OF CLAIM:

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember the complaint must be stated briefly and concisely. IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.

MY PROPERTY WAS CONFISCATED WITHOUT DUE PROCESS OF LAW VIOLATION OF PROCEDURAL DUE PROCESS RULES A  
cell-house during Unit Lock-Down 19 Oct. 2018, defendant-Correctional officer, defendant-Sweet  
And defendant-John Doe-Investigator. John Doe-officer conducted in cell search he removed  
my HAND GLOVES from cell Locker because that's were I put them. Defendant Sweet ordered  
John Doe-officer AND other of his subordinates to <sup>give</sup> CONFISCATION to inmates if they remove  
Items from any cell. John Doe-officer did not listen because many inmates were missing medical  
items etc... I filed A Grievance However Investigator defendant John Doe omit to FIND  
FAULT in either of defendant Sweet or defendant John Doe-officer <sup>even</sup> With camera Filming  
Record to help with investigation. The <sup>page 3</sup> Grievance manual states I am to get ALL <sup>Formal</sup> written responses But I  
did not, omission of responsive action in grievance system.

## VI. RELIEF:

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Give me Prisoner Release order ~~under due process~~.  
Give me Compensatory And Punitive damages in amount of \$100,000.00 against each  
of defendant

## VII. GENERAL BACKGROUND INFORMATION:

A. State, in complete form, all names you have ever used or been known by including any and all aliases.

B. List all TDCJ-CID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you.

## VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed? ☐ YES ☒ NO

B. If your answer is "yes," give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (if federal, give the district and division): \_\_\_\_\_

2. Case number: \_\_\_\_\_

3. Approximate date sanctions were imposed: \_\_\_\_\_

4. Have the sanctions been lifted or otherwise satisfied? ☐ YES ☐ NO

C. Has any court ever warned or notified you that sanctions could be imposed? ☒ YES ☐ NO

D. If your answer is "yes," give the following information for every lawsuit in which a warning was issued. (If more than one, use another piece of paper and answer the same questions.)

1. Court that issued warning (if federal, give the district and division): Southern
2. Case number: 2:17-cv-370
3. Approximate date warning was issued: 10 Dec. 2018

Executed on: 3 March 2019  
DATE

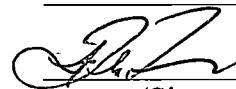


(Signature of Plaintiff)

### PLAINTIFF'S DECLARATIONS

1. I declare under penalty of perjury all facts presented in this complaint and attachments thereto are true and correct.
2. I understand, if I am released or transferred, it is my responsibility to keep the court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions or appeals (from a judgment in a civil action) in a court of the United States while incarcerated or detained in any facility, which lawsuits were dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger of serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire filing fee and costs assessed by the court, which shall be deducted in accordance with the law from my inmate trust account by my custodian until the filing fee is paid.

Signed this 03 day of March, 20 19.  
(Day) (month) (year)



(Signature of Plaintiff)

**WARNING: Plaintiff is advised any false or deliberately misleading information provided in response to the above questions may result in the imposition of sanctions. The sanctions the court may impose include, but are not limited to, monetary sanctions and the dismissal of this action with prejudice.**

- 1). JUN. 5 2017
2. Benjamin Franklin  
Ricky Pool, et Al.
3. Northern
4. 7:17-CV-82-0
5. Reed O'Connor
6. Still Pending

- 1). 11/23/2015
2. Benjamin Franklin  
Glenn S. Blair
3. Northern
4. 7:15-CV-00169-0
5. Reed O'Connor
6. Still Pending

- 1). Aug 2 2017
2. Benjamin Franklin  
MARISSA MAYER
3. Northern
4. 3:17-CV-03606-WHA
5. William Alsup
6. Dismissed
7. August 2, 2017

- 1). 08/07/2017
2. Benjamin Franklin  
HAZELLE M. DAVIS, et Al
3. Northern
4. 7:17-CV-00109-0
5. Reed O'Connor
6. Still Pending

- 1). 11-20-17
- 2). Benjamin Franklin  
Maggie Schillaci
- 3). Northern
- 4). 7:17-CV-166-0
- 5). Reed O'Connor
- 6). Still Pending



Exhibit A  
STEP 1

# OFFENDER GRIEVANCE FORM

Grievance #: 2019026178  
Date Received: 10.25.18  
Date Due: 12.4.18  
Grievance Code: 512  
Investigator ID #: 2547  
Extension Date: \_\_\_\_\_  
Date Retd to Offender: DEC 05 2018

State your grievance in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate on date: 19<sup>th</sup> AND 20<sup>th</sup> October 2018 Sergeant Sweet told me AND others to write Property officer mr. menchaca, RAfael - Correctional officer II For your property taken during second Lockdown Property ~~search~~ Search in side cell on 3-Building B-Pod 3-section Because "I told the Correctional officers to give Confiscation Paper to offenders However they disobey my LAWFul order they wanted to do things there own way." T.D.C.J. General Rules of conduct And Disciplinary Action Guidelines For Employees PD-22 Rules 13 AND 36 Failure to obey a proper order from an Authority Verbal or written order issued directly to Employee by or through chain of supervision - IN Subordination prohibited disrespect for authority of Sergeant Christopher D. Sweet through behavior of Correctional officers. ~~My~~ My Gloves taken WAS NOT returned to me Nor WAS I given Confiscation Papers II wrote AN I-60 request form to Mr. menchaca on date: 22 October 2018 my NAME AND ID. Number is on gloves I purchased From Commissary on date: 26 October 2017 Time 13:39:09 Location 0482-02 Salesperson: 0W0004 Item Number: 00911 - D-Gloves - Jersey Cotton Gloves Price .85¢ Violation of United States constitutional Right Amendment IV, ~~deprived~~ deprived of Property without due Process of LAW, T.D.C.J. OFFender Grievance Procedure Issue Codes: 512 @ CONFISCATED Property 523 - FACility LockDown, 515 - Property Lost AS result of STAFF, 518 - Searches - Housing. Sgt. Sweet could have Filed employee Grievance because of ~~IN~~ IN Subordination of Co-workers Why did he Not? Blow the Whistle (see) 2016 TX. App. Lexis 5765 - TEXAS Constitution Art. I, sec. 17(a) provides that NO property shall be taken Without Adequate compensation being made

(see) Carey vs. Phipps, 98 S.Ct. 1042 (1978) Procedural due process rules are meant to protect persons from mistaken or unjustified deprivation of property (See) (HARM to me) per, Sawyer vs. TX. Dept. of Crim. Justice 983 S.W.2d 310 (TX App. Houston 1st Dist. '98) TANGIBLE personal property within meaning of provision of Tort Claims Act WAIVING State's Sovereign Immunity. V.T.C.A. Civil Practice & Remedies code section 101.021(2). Sergeant-Sweet is Not hispanic so his subordinates do not want to obey his orders he is AFRAID to file Grievance against them because of Retaliation against him. This Harm resulted in Mental Anguish to me in addition to Monetary Harm AND Federal Rights I seek Redress, 261 S.W.3d 297, '08

Action Requested to resolve your Complaint:

Reimburse my property to me AND instruct STAFF how to use Employee grievance complaint against other STAFF's IN subordination

SGT Sweet

OCT 25 2018

Offender Signature: SGT Sweet #1561085

Date: 25 October 2018

Grievance Response:

EXHIBIT: A

An investigation has been conducted into your complaint. Upon investigation, the property officer contends that the item in question was not turned into property room. Furthermore, there is no PROP-8 for the date of incident noted in your grievance. No further action is warranted by this office.

Signature Authority:

Warden G. Miller

Date:

12/4/18

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: \*Resubmit this form when the corrections are made.

- ☐ 1. Grievable time period has expired.
- ☒ 2. Submission in excess of 1 every 7 days. \* 610
- ☐ 3. Originals not submitted. \*
- ☐ 4. Inappropriate/Excessive attachments. \*
- ☐ 5. No documented attempt at informal resolution. \*
- ☐ 6. No requested relief is stated. \*
- ☐ 7. Malicious use of vulgar, indecent, or physically threatening language. \*
- ☐ 8. The issue presented is not grievable.
- ☐ 9. Redundant, Refer to grievance # \_\_\_\_\_
- ☐ 10. Illegible/Incomprehensible. \*
- ☐ 11. Inappropriate. \*

UGI Printed Name/Signature: \_\_\_\_\_

Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Medical Signature Authority: \_\_\_\_\_

#### OFFICE USE ONLY

Initial Submission

UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

2<sup>nd</sup> Submission

UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

3<sup>rd</sup> Submission

UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_



JAN 31 2019

EXHIBIT A



## Texas Department of Criminal Justice

## STEP 2

OFFENDER  
GRIEVANCE FORM

Offender Name: Franklin, Benjamin TDCJ# 1561085  
 Unit: MC Connell Housing Assignment: 3 B 67 T  
 Unit where incident occurred: McConnell

## OFFICE USE ONLY

Grievance #: 2019026178  
 UGI Recd Date: DEC 10 2018  
 HQ Recd Date: DEC 17 2018  
 Date Due: 1/19/19  
 Grievance Code: 512  
 Investigator ID#: 11312  
 Extension Date: \_\_\_\_\_

You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.

Give reason for appeal (Be Specific). I am dissatisfied with the response at Step 1 because...

Grievance Number 2019026178 I had Commissary Item number: 809111 - D-Gloves - Jersey inside my locker when order by STAFF to exist my cell due to a Lock-Down <sup>unit</sup> ~~cell~~ inside cell ~~and~~ search when I returned as ordered by STAFF IT WAS NOT inside cell. I Lost property AS result of STAFF Grievance Code: 515 UNConstitutional deprivation of property without due process of LAW Both TEXAS AND Federal. Violation of T.D.C.J PD-22 Rule 7 Substandard Duty performance of the officer that search my cell on said date with CAMERA record AND Sergeant Sweet because he Admitted to me AND all inmates in Dayroom that he order them to write CONFISCATION PAPER PROP-8 Form the STAFF willfully violated T.D.C.J. PD-22 Rule 36 - In subordination AND Sergeant Sweet, willfully disobeyed policy by Not filing an employee Grievance that he WAS having problems with STAFF obeying him. He did nothing but come back AND Complain to inmates like we're suppose to make the officer file CONFISCATION PAPER the Sergeant is clearly illegitimated to hold rank he does not want to uphold the T.D.C.J. Policy nor standard for U.S.A. is guilty just as much As the officer that Search the Cell. I Need my Gloves returned to me OR Reimbursed for lost of my property. Further Action is Warranted. The Grievance investigator is At Fault for Not Coding step 1 properly with 515 Instead of 512. Since Response States NO Property return to Propertyroom No PROP-8

Paper-Form. so this proves it is coded wrong intentionally! conspiracy meeting of the minds of employees.

Offender Signature: Be Z #1561085

Date: 7 December 2018

Grievance Response:

Your property complaint has been reviewed by this office. Staff statements were obtained and reviewed. However, your allegations of your gloves being confiscated could not be substantiated. Therefore, no further action will be taken.

Signature Authority:

M. Blalock M. BLALOCK

Date:

1-15-19

Returned because: \*Resubmit this form when corrections are made.

- ☐ 1. Grievable time period has expired.
- ☐ 2. Illegible/Incomprehensible.\*
- ☐ 3. Originals not submitted.\*
- ☐ 4. Inappropriate/Excessive attachments.\*
- ☐ 5. Malicious use of vulgar, indecent, or physically threatening language.
- ☐ 6. Inappropriate.\*

CGO Staff Signature:

### OFFICE USE ONLY

Initial Submission CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

2<sup>nd</sup> Submission CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

3<sup>rd</sup> Submission CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

Benjamin Franklin, #1561085  
McConnell Unit  
3001 S. Emily Drive  
Beeville, TX 78102

States Courts  
District of Texas  
FILED

MAR 11 2019

David J. Bradley, Clerk of Court

United States District Court Southern Texas  
Office of Clerk  
1133 N. Shoreline Blvd.  
Corpus Christi, Texas 78401

9091  
SAN ANTONIO P&DC PG 2 ZIP  
FRI 08 MAR 2019 PM

